THE HONOURABLE SRI JUSTICE T.CH. SURYA RAO
AND
THE HONOURABLE SRI JUSTICE G. CHANDRAIAH

W.P.NOS. 22863, 23361, 23363, 23366, 23368, 23370, 23373, 23377, 23379, 23381, 23362, 23365, 23367, 23369, 23372, 23376, 23378, 23380, 23382 AND 23364,23458 OF 1999

COMMON ORDER (Per the Hon'ble Sri Justice. T.Ch.Surya Rao)

Inasmuch as all these writ petitions arise out of a common order dated 1-9-1999, all these can be disposed of together.

2. W.P.No.23382/1999 is the main writ petition, which arise out of the judgment of the Special Court in LGC. No. 17/1996. There are as many as 91 respondents. 91st respondent is the State. Some of the respondents among the 90, filed individual land grabbing cases before the Special Court against the applicants in L.G.C. No. 17/1996. Some of the applicants who filed land grabbing cases before the Special Court against the applicants in L.G.C. No. 17/1996, are not parties thereto. On a joint memo filed by all the parties in 23 L.G.C. cases together, the evidence was recorded by the Special Court in L.G.C.No.17/1996 and the same is treated as evidence in the remaining 22 land grabbing cases. As said herein above, a common judgment was delivered in all these batch cases on 1-9-1999.

3. The case of the applicant in L.G.C.No.17/1996 was that one G.E.Cox was the original owner of the disputed land admeasuring Acs.12.23 guntas situate at Gutta Begumpet village, Sherligampally Municipality covered by Sy.No.32. One V.Venkateswara Rao purchased the property from G.E.Cox, who was original pattadar of the land, under a registered sale deed dated 6-5-1963. The said Venkateswara Rao, who is respondent No.5, in turn agreed to sell the property in favor of the applicants and entered into an agreement of sale dated 7.6.1971 and possession was delivered to the applicants who paid the entire sale consideration of the agreement. Sine the respondent no.5 did not execute the sale deeds in favour of the applicants, they applied to the Mandal Revenue Officer, Sherlingampally Municipality for regularization of the sale as per the provisions of A.P. Rights in Land and Pattadar Pass Books Act, 1971 (for short 'the R.O.R. Act'). The Mandal Revenue Officer vide his proceedings in file No.B/788/92, dated 22-10-1992

regularized the sale and issued the sale certificate in Form 13-C of the R.O.R. Act. After the regularization of the sale, names of the applicants were also mutated in the revenue records. The respondents 85 to 90 tried to forcibly occupy the said land on 12.3.1993 and on 14.3.1993. The applicants, therefore, filed O.S.No. 76/1993 on the file of the District Munsif, (West and South) for perpetual injunction and the said suit is pending. In I.No. 200/1993 in the said suit, temporary injunction was granted restraining respondents 85 to 90 from interfering with the possession of the applicants. Respondents 1 to 20, who have no title or interest in the land in dispute, converted the land into plots as per the layout prepared by them unauthorizedly and executed various registered sale deeds conveying the plots in favour of respondents 21 to 84. The 6th respondent executed the sale deeds on behalf of the 5th respondent as his power of attorney. The 6th respondent fabricated and forged the General Power of Attorney purported to have been executed by the 5th respondent. Respondents 1 to 4 further executed the deed of power of attorney appointing the respondent no. 6 as their attorney. On the basis of these two General Power of Attorneys respondent no.6 on behalf of respondents 1 to 5 executed the sale deeds in favour of respondents 21 to 46. Respondents 7 to 20 also executed sale deeds conveying plots in favour of respondents 21 to 83. In all these sale deeds thus executed by respondents 1 to 20, they claimed that the vendors are the absolute owners. All these acts were organized acts on the part of the respondents, which tantamount to land grabbing, hence the application.

4. Respondents 1 and 6 filed a counter resisting the application. That application was adopted by respondents 20,30,35,43,82,85,86,87 and 90. Respondent no.40 filed a counter. Respondent no. 56 filed a separate counter. Respondents 66 and 67 filed a memo adopting the counter filed by respondent no. 56. Respondent no. 58 filed a separate counter. Respondents 24,25,27 to 29, 33, 39, 44, 51, 52, 58 to 60,65,68 to 71, 73, 76, 77, 79 and 88 filed a memo adopting the counter filed by respondent no.58. It was the case of respondents 1 and 6 that one Voruganti Chinna Chittaiah, the father of respondents 1 to 4,6 and 7 was in possession and enjoyment of the land covered by Sy.No.32 in an extent of Acs.12.23 guntas in his own right as owner thereof ever since 1960 onwards, openly un-interruptedly and

to the knowledge of one and all and, therefore, respondents 1 to 4 and 7 who have been in possession along with their father late Voruganti Chinna Chittaiah, have perfected the title by adverse possession. Respondents 1 to4,6 and 7 disposed of the land in question to respondent no.87 and others. The purchasers developed, leveled and laid the roads investing huge amounts. Respondents 1 to 4, 6 and 7 executed the sale deeds in favour of various subsequent purchasers. While so, in the year 1988 one person by name P.V.N.Rao along with one K.Gopichand claimed to be the General Power of Attorney of the applicants, approached the respondents 1 to 4, 6 and 7 and demanded amounts by showing some documents. Respondents 1 to 4, 6 and 7 paid the amounts through the said P.V.N.Rao, who passed receipts and arranged a General Power of Attorney from respondents no.5 in favour of respondent no.6 in respect of application schedule property. On the basis of the said General Power of Attorney, the land was divided into plots and sold to various parties, including some of the respondents herein. The applicants in collusion with the said K.Gopichand filed an application before the Mandal Revenue Officer for mutation and without any notice to them, who were in possession, the Mandal Revenue Officer passed orders behind their back. Respondents having come to know of the fraud, approached the Revenue Divisional Officer, who suspended the orders of Mandal Revenue Officer dated 22.10.1992.

5. It is the stand taken by the other respondents that they purchased the individual plots from respondent no.6 who executed the registered sale deeds in their favour after having received the consideration from them, represented by respondent no.5 by means of General Power of Attorney and, therefore, all of them are bona fide purchasers, without knowing any existence of an agreement of sale in favour of the applications. They denied the alleged agreement of sale in favour of the applications.

6. The applicants filed the memo seeking to withdraw the application as against respondents 10, 11, 12, 14 to 21, 23, 36, 33, 41, 42, 45, 47, 48, 49, 50, 53, 54, 55, 57, 61 to 64, 73, 74, 78, 81 and 83 on the ground that they could not find their correct addresses. The application in favour of those respondents are concerned, has been dismissed. Similarly, the application has been dismissed at their instance as against respondents 5,7,31,32,44,46

and 80.

7. On the basis of the above pleadings, the Special Court framed the following issues:

1. Whether the applicants are owners of the application schedule property?
2. Whether the respondents 1 and 6 preferred title to the application schedule property by adverse possession?
3. Whether the respondents 1 to 4 and 6 to 90 are the land grabbers within the meaning of the Section 2(d) and 2(e) of A.P. Land Grabbing (Prohibition) Act 1982?
4. Whether the applicants are entitled to relief of possession as prayed by them ?
5. Whether the possession of the applicants is liable to be confirmed?
6. To what relief?

8. At the time of inquiry, two witnesses were examined on the side of the applicants including the respondent no. 5 as P.W.2 and documents Exs. A-1 to A-11 were got marked. On behalf of the respondents 66, 67, 56, 24, 71, 28, 29, 40, and 37 were examined as R.Ws.1 to 8 and 13 and the applicants in L.G.C. Nos. 235/1995, 234/1995, 74/1996 and 11/1996 were examined as R.Ws.9 to 12. Respondents no. 68 was examined as R.W.14 and respondent no.69 was examined as R.W.15. Exs. B-1 to B-35 were got marked in all, on the side of the respondents. Appreciating the evidence adduced on either side, the learned Special Court eventually was of the view that the applicants failed to prove their title and consequently respondents 1 to 4, 6 to 90 were not the land grabbers. In sequel thereto the learned Special Court dismissed L.G.C.No.17/1996 and in consequence thereof, allowed the other applications. Assailing the common order, as aforesaid, the applicants in L.G.C.No.17/1996 filed individual writ petitions.

9. Sri Muddu Vijay, the learned Counsel appearing for the petitioners represents that the finding that the agreement of sale in favour of the applicants is a bogus document, is erroneous having regard to the evidence of P.W.2 the executant thereof. Learned Counsel further represents that the other respondents claimed to have purchased the land in dispute under various registered sale deeds from respondent no.6, who is said to have executed the sale deeds pursuant to the General Power of Attorney said to

have been executed by respondent no.5 in favour of respondent no.6. When respondent no.5 denied the execution of any such General Power of Attorney, the respondents cannot derive any title under the registered sale deeds. Per contrary, the learned counsel appearing for the contesting respondents contended that the writ petitioners cannot get any title over the land in dispute pursuant to an agreement of sale and more so, when the regularization made by the Mandal Revenue Officer under the provisions of the R.O.R.Act has subsequently been set aside by the Joint Collector in appeal dated 29.12.2001and that order has become final.

10. In view of the competing claims it has to be seen as to whether the applicants have title in their favour over the lands in dispute.

11. Certain facts which are not in dispute are expedient to be set forth at the outset for brevity and better understanding of the matter. The lands in dispute are covered by Sy.no. 32 and their extent is obviously Acs.12.23 guntas. The lands in dispute are situate at Guttala Begumpet village, coming within the limits of Serlingampaly municipality. The pattadar thereof was originally on G.E.Cox. The name of the said G.E.Cox stood registered in all the revenue records as the pattadar. The said G.E.Cox by means of registered sale deed dated 6-5-1963 sold away the land in dispute to one V.Venkateshwar Rao, respondent no.5 herein. While the applicants claim that they purchased the land in dispute by means of an agreement of sale from the said V.Venkateswara rao, respondent no.5 , it is the quintessence of the plea of the respondents that the said V.Venkateshwara Rao executed the General Power of Attorney in favour of respondent no.6, who in turn sold the lands in dispute under various registered sale deeds after preparing the layout and dividing the land into various plots. From the rival contentions it is obvious that the applicants as well as the respondents claim ultimately only through the original pattadar G.E. Cox and his vendee V.Venkateshwara Rao, the fifth respondent.

12. Ex.A.3 is the agreement of sale to have been executed by the said V.Venkateshwara Rao, respondent no.5 in favour of the applicants. This document was held to be a bogus document by the learned Special Court, inasmuch as the execution thereof was denied by the respondents and the document was very much in dispute. In proof thereof, the applicants

examined P.W.2. P.W.2 according to the applicants is no other than the respondent no.5 himself, the executant of Ex.A.3. In the cross-examination of this witness, it was suggested that he was not the original V.Venkateshwar Rao, respondent no.5 and that he was an imposter. Although the entire cross-examination, on a perusal, seems to have been not shaken, the veracity of the witness, having regard to the dispute as regards the identity of the witness, it is for him or for the applicants to show that P.W.2 is not an imposter and in fact he is the respondent no.5. The Special Court not on this ground, but on the premise that respondent no.5 who is an eonominee party to the proceedings and when the application qua respondent no.5 has been dismissed for non-payment of batta, cannot figure himself as a witnesses on behalf of the applicants and, therefore, the evidence of p.w.2 has to be eschewed from consideration, ultimately held that it cannot be considered. We are afraid, that with due regard, the finding is not correct. A party to the proceedings that remained *ex parte*, can certainly figure himself as a witness on either side of the case and there has been no legal prohibition in regard thereto. The question remains to be considered always is the veracity of the witness and the credibility of the statement made by him on oath before the Court. In that view of the matter, the way in which the testimony of P.W.2 is sought to be eschewed from consideration by the learned Special Court, in our considered view, is not correct.

13. The Special Court *inter alia* in its judgment held that Ex.A.3 agreement of sale was bogus document. The reasons given in support thereof are again the self-same reasons for eschewing the testimony of P.W.2 from consideration. If really P.W.2 is respondent no.5 himself and he is not an imposter, there can be no other evidence that is required than the executant of the document himself. That evidence will squarely prove the execution of Exs.A-3. Various mistakes thus seems to have been committed by the learned Special Court in eschewing from consideration the testimony of P.W.2 and Ex.A.3. Notwithstanding the same, still we have to see whether Ex.A.3 has been proved since its execution is very much in dispute.

14. For the reasons, herein above discussed, we are unable to accept that P.W.2 is an imposter. In the absence of the testimony of P.W.2 except

self-serving testimony of P.W.1, one of the applicants, there is no other evidence available on record to prove the valid execution of Ex.A.3. Be that as it may, Ex.A.3 according to pleading of the applicants is a mere contract of sale. However, an attempt has been sought to be made before us, late in the day and contrary to the pleading that Ex.A.3 is not a contract of sale instead, it is an out and out sale and it has been regularized under Section 5-Aof the R.O.R. Act validly. The learned Special Court refused to consider Ex.A.3 on the ground that it is a contract of sale and it cannot be regularized under Section 5-A of the R.O.R.act for the reason that the transactions that can be regularized are only the alienations or the transfers, but not a contract of sale. The view taken by the learned Special Court is in correct. An agreement of sale can be regularized under the provisions of Section 5-A of the R.O.R. Act as the Vendor i.e. V.Venkateshwar Rao therein has admitted the execution of Ex.A.3 ad also received the entire sale consideration and also delivered the possession under Ex.A.3 to the petitioners therein and as such the same can be treated as transfer and alienated. A perusal of the document shows that the recitals mentioned therein would lead to the conclusion that there has been a transfer of the property. What has been reserved at the bottom of the documents seems to be, to execute the registered sale deed when the parties get ready, after having prepared the deed. It appears quite unnecessary for us at this stage to make an attempt to see whether Ex.A.3 is a mere contract of sale or an out and out sale, having regard to the fact that the order passed by the Mandal Revenue Officer regularizing the transaction under Section 5-A of the R.O.R.Act has been subsequently been set aside by the Joint Collector in the appeal filed by some of the respondents therein. The Joint Collector in his proceedings No.D5/7641/97 & D5/6307/99 dated 29-12-2001 allowed the appeal while upsetting the order passed by the Mandal Revenue Officer. This being an order passed by the quasi judicial authority under the provisions of the R.O.R Act can be taken into consideration, a fortiori this being a subsequent event, cannot definitely be taken note by this Court, as the document has not been filed and marked before the learned Special Court. In our considered view, that fact cannot be taken. If that is so, the order passed by the Manal Revenue Officer validating the transaction under Ex.A.3 is in existence.

15. Coming to the applications filed individually by some other respondents, who are either parties to L.G.C.17/1996, who are though not parties to the said L.G.C., filed the individual applications against the applicants in L.G.C.17/1996.

16. Apropos the case, the other contesting respondents, it is obvious that they claimed title only from the original pattadar G.N.Cox and his vendee, the respondent no.5 herein. They claimed to have purchased the individual plots from respondent no.6 by means of regular and registered sale deeds after having paid valid consideration and respondent no.6 executed those sale deeds as per the General Power of Attorney said to have been executed in his favour by V.Venkateshwara Rao, respondent no.5. The power of attorney has not seen the light of the day. Taking clue from the statement of denials made by the applicants in their application, wherein they have mentioned the number of G.P.A. while denying its execution, the existence of the General Power of Attorney has been considered by the learned Special Court, obvious of the fact that the execution of the said document is at stake and respondent no.6 who is said to have executed registered sale deeds in favour of other respondents remained ex parte and did not choose to come into the witness box and prove that in fact there had been such a General Power of Attorney executed by respondent no.5 in his favour. As things stand, the General Power of Attorney said to have been executed by respondent no.5 in favour of respondent no.6 is not before the Court and none has appeared before the court as a witness in proof thereof. In the absence of any such proof positive, their simple case while denying the existence o General Power of Attorney by mentioning the number, cannot automatically be taken to conclude that such a General Power of Attorney is in existence. It is not the existence of General Power of Attorney that is in dispute, but it is the execution of such a document which is at stake, shall have to be noted. In the absence of any such General Power of Attorney, respondent no.6 obviously has no capacity to execute independent sale deeds in favour of the respondents. All the registered sale deeds executed by respondent no.6 in favour of individual respondents, which are filed in this case, therefore, have to be eschewed from consideration for want of necessary authority in favour of respondent no.6 to have executed them.

The respondents cannot, therefore, claim that they have derived valid title under various registered sale deeds for want of necessary proof.

17. It is very curious that the applicants in L.G.C.17/1996 claimed that the respondents are the land grabbers and some of the respondents who filed independent applications claiming the applicants in L.G.C.No.17/1996 are the land grabbers in so far as the lands covered by those applications. Both cannot be the land grabbers, is obvious. It is averred *inter alia* in the applications filed by some of the respondents and individuals that they had been in possession of the plots purchased by them and constructed structures there on and that the applicants with the aid of antisocial elements highhandedly got the structures demolished. All of them have prayed the relief of possession no doubt, but there has been no plea made inter alia applications made by the respondents to the effect that there has been an act of land grabbing committed by the applicants in respect of their individual plots. It may be mentioned here that the allegation of committing an act of lad grabbing alone confers jurisdiction on the Special Court, as otherwise, the case falls squarely within the domain of the civil court. Unfortunately, in the cases of the respondents there has been no such allegation that the applicants committed an act of land grabbing. If the applicants highhandedly, as alleged, got the structures demolished with the help of gundas, that will not confer the necessary jurisdiction on the Special court or the Special Tribunal, as the case may be in the absence of any averment in the application that the applicants took forcible possession of the lands in dispute illegally and without any lawful entitlement thereto, with a view to alienate the same or otherwise dispose it of or to construct any structures thereon or to lease out the same etc., as enumerated *inter alia* in clause (e) of section 2 of the A.P. Land Grabbing (Prohibition) Act. The act complained of must necessary fall within the purview of the definition 'land grabbing' enjoined under clause (e) of Section 2 of the Act. There has been no such averment made *inter alia* in the applications filed by some of the respondents before the Special Court, who are the respondents in L.G.C. No. 17/1996 and other respondents. Therefore, the jurisdiction of the Special Court cannot clutch it.

18. For the above reasons, W.P.No. 23382 of 1999 is allowed and

W.P.Nos. 22863, 23361, 23363, 23366, 23368, 23370, 23373, 23377, 23379, 23381, 23362, 23365, 23367, 23369, 23372, 23376, 23378, 23380, 23458, AND 23364 OF 1999 stand automatically allowed, by setting aside the judgment and decree in L.G.C.No.17 of 1996. However, we direct the parties to bear their respective costs.

T.CH. SURYA RAO,J

G. CHANDRAIAH,J.

AVS
DATE: 27.07.2006.